

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

JFW

In Re Application of: Norbert Dumler

Application No.: 10/656,505

Filed: September 8, 2003

For: CONTAINER AND APPLICATION UNIT

THE COMMISSIONER OF PATENTS  
 U.S. Patent and Trademark Office  
 Customer Service Window  
 Randolph Building, Mail Stop Amendment  
 401 Dulany Street  
 Alexandria, VA 22314



Art Unit: 3751

Examiner: D. J. WALCZAK

Washington, D.C.

Atty.'s Docket: DUMLER29

Date: June 9, 2005

Confirmation No. 8344

Sir:

Transmitted herewith is a [XX] REPLY: RESTRICTION REQUIREMENT in the above-identified application.

[ ] Small Entity Status: Applicant(s) claim small entity status. See 37 C.F.R. §1.27.  
 No additional fee is required.  
 [ ] The fee has been calculated as shown below:

	(Col. 1) CLAIMS REMAINING AFTER AMENDMENT	(Col. 2) MINUS	(Col. 3) HIGHEST NO. PREVIOUSLY PAID FOR	PRESENT EXTRA EQUALS
TOTAL	*	MINUS	** 20	0
INDEP.	*	MINUS	*** 3	0
FIRST PRESENTATION OF MULTIPLE DEP. CLAIM				

ADDITIONAL FEE TOTAL

SMALL ENTITY		OR	OTHER THAN SMALL ENTITY	
RATE	ADDITIONAL FEE		RATE	ADDITIONAL FEE
x 25	\$		x 50	\$
x 100	\$		x 200	\$
+ 180	\$		+ 360	\$
		OR		
			TOTAL	\$

- If the entry in Col. 1 is less than the entry in Col. 2, write "0" in Col. 3.
- If the "Highest Number Previously Paid for" IN THIS SPACE is less than 20, write "20" in this space.
- If the "Highest Number Previously Paid for" IN THIS SPACE is less than 3, write "3" in this space.

The "Highest Number Previously Paid For" (total or independent) is the highest number found from the equivalent box in Col. 1 of a prior amendment of the number of claims originally filed.

Conditional Petition for Extension of Time  
 If any extension of time for a response is required, applicant requests that this be considered a petition therefor.

[ ] It is hereby petitioned for an extension of time in accordance with 37 CFR 1.136(a). The appropriate fee required by 37 CFR 1.17 is calculated as shown below:

## Small Entity

## Response Filed Within

[ ] First - \$ 60.00  
 [ ] Second - \$ 225.00  
 [ ] Third - \$ 510.00  
 [ ] Fourth - \$ 795.00

## Month After Time Period Set

[ ] Less fees (\$ \_\_\_\_\_) already paid for \_\_\_\_ month(s) extension of time on \_\_\_\_\_.

## Other Than Small Entity

## Response Filed Within

[ ] First - \$ 120.00  
 [ ] Second - \$ 450.00  
 [ ] Third - \$ 1020.00  
 [ ] Fourth - \$ 1590.00

## Month After Time Period Set

[ ] Please charge my Deposit Account No. 02-4035 in the amount of \$ \_\_\_\_\_.

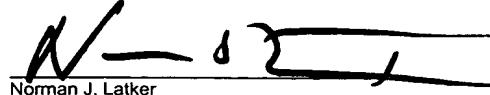
[ ] Credit Card Payment Form, PTO-2038, is attached, authorizing payment in the amount of \$ \_\_\_\_\_.

[ ] A check in the amount of \$ \_\_\_\_\_ is attached (check no. \_\_\_\_\_).

The Commissioner is hereby authorized and requested to charge any additional fees which may be required in connection with this application or credit any overpayment to Deposit Account No. 02-4035. This authorization and request is not limited to payment of all fees associated with this communication, including any Extension of Time fee, not covered by check or specific authorization, but is also intended to include all fees for the presentation of extra claims under 37 CFR §1.16 and all patent processing fees under 37 CFR §1.17 throughout the prosecution of the case. This blanket authorization does not include patent issue fees under 37 CFR §1.18.

BROWDY AND NEIMARK, P.L.L.C.

Attorneys for Applicant(s)

By:   
 Norman J. Latker  
 Registration No. 19,963

Facsimile: (202) 737-3528  
 Telephone: (202) 628-5197



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Atty. Docket: DUMLER=29

In re Application of: ) Conf. No.: 8344  
Norbert DUMLER )  
Appln. No.: 10/656,505 ) Art Unit: 3751  
Date Filed or 102(e) date: )  
September 8, 2003 ) Examiner: David WALCZAK  
For: CONTAINER AND APPLICATOR... ) Washington, D.C.  
 ) June 9, 2005

**REPLY TO RESTRICTION REQUIREMENT**

Customer Service Window  
Randolph Building, Mail Stop Amendment  
401 Dulany Street  
Alexandria, VA 22314

Sir:

The present communication is responsive to the Official Action of May 9, 2005. Claims 1-16 presently appear in this case. All of the claims have been subject to a requirement for election of species. Prompt consideration on the merits of all of the claims now present in this case is hereby respectfully urged.

The examiner states that the present application contains claims directed to the following patentably distinct species of the claimed invention: Species I: Figures 1-3; Species II: Figures 4-6; Species III: Figures 7-9, 12;

Species V; Figures 13-15 and Species VI Figures 16-19. The examiner has required applicant to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. The examiner states that he considers claim 1 to be generic. It is noted that the examiner has indicated that, upon the allowance of a generic claim, applicant will be entitled to consideration of claims to the allowance of generic claims, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim.

Applicant hereby elects the Species I; Figures 1-3, is believed that claims 1-5 and 13-16 read on the elected species.

In view of the fact that applicant believes that a generic claim might be allowable, applicant is not traversing on the grounds that the species are not patentably distinct. Applicant has not attempted to gather evidence showing the species to be obvious variants. It is noted for the record, however, that this election of species requirement represents an admission on the record on the part of the examiner that each of the species is patentably distinct and, if the

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Amdt. Dated June 9, 2005  
Reply to Office Action of May 9, 2005

examiner finds a reference showing only one of the species, then he cannot reject any of the other species over that same reference. If the examiner learns of any evidence which causes him to change his mind as to the patentable distinctness of any of the species, then it is respectfully requested that the be reflected on the record.

Prompt consideration of all the claims reading on the elected species and, following allowance of the generic claim, all species covered by the generic claim is therefore earnestly solicited.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.  
Attorneys for Applicant(s)

By

  
Norman J. Latker  
Registration No. 19,963

NJL:srd

Telephone No.: (202) 628-5197  
Facsimile No.: (202) 737-3528  
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